

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

Dan Muller
Kossuth County, Iowa

ADMINISTRATIVE CONSENT ORDER
NO. 2012-AFO- 18

TO: Dan Muller
506 230th Street
Whittemore, Iowa 50598

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Dan Muller for the purpose of resolving the failure to timely submit Manure Management Plan (MMP) updates and fees for 2011 for two of Mr. Muller's facilities. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Trent Lambert, Field Office 2
Iowa Department of Natural Resources
2300 15th Street SW
Mason City, Iowa 50401
Phone: 641/424-4073

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone: 515/281-8563

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative consent order is issued pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division III, Part 1 or Iowa Code Chapter 459 and the rules adopted or permits issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties.

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III. STATEMENT OF FACTS

1. Mr. Muller owns and operates several animal feeding operations in Kossuth County, Iowa, including the two mentioned in this administrative consent order. The first facility, known as Dan Muller 2, is located at 506 230th Street; Whittemore, Iowa (Section 35; Lotts Creek Township; Kossuth County, Iowa). The facility is a swine to finish operation with 3,300 head (1,320 animal units). The second facility, known as Dan Muller 5, is located at 605 Highway 18; Algona, Iowa (Section 36; Lotts Creek Township; Kossuth County, Iowa). The facility is a swine to finish operation with 3,300 head (1,320 animal units). Mr. Muller is required to submit an updated MMP and compliance fee each year for each of the facilities. The compliance fee for each of the two facilities is \$198.00.

Dan Muller 2 Facility

2. The MMP update and compliance fee for 2011 for this facility were due October 1, 2011. On October 12, 2011, DNR Field Office 2 sent a Notice of Violation letter to Mr. Muller. The letter informed Mr. Muller that the MMP update and compliance fee must be submitted by November 1, 2011 in order to avoid further enforcement. On December 16, 2011, DNR Field Office 2 sent a Notice of Referral to Mr. Muller informing him the violations were being referred for further enforcement.

3. On March 5, 2012, DNR Field Office 2 received the MMP update and compliance fee for the Dan Muller 2 facility.

Dan Muller 5 Facility

4. The MMP update and compliance fees for 2011 for this facility were due October 1, 2011. On October 12, 2011, DNR Field Office 2 sent a Notice of Violation letter to Mr. Muller. The letter informed Mr. Muller that the MMP update and compliance fee must be submitted by November 1, 2011 in order to avoid further enforcement. On December 16, 2011, DNR Field Office 2 sent a Notice of Referral to Mr. Muller informing him the violations were being referred for further enforcement.

5. On March 5, 2012, DNR Field Office received the MMP update and compliance fee for the Dan Muller 5 Facility.

Past History

6. Mr. Muller has knowledge of the MMP filing requirements. Mr. Muller has failed to submitted timely MMP updates for the Dan Muller 2 facility in the past. Mr. Muller failed to timely submit the 2003 MMP update and fees. A Notice of Violation letter was issued on October 10, 2003 and the MMP update and

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compliance fee were submitted on October 20, 2003. Mr. Muller failed to timely submit the 2006 MMP update and fees. A Notice of Violation letter was issued on October 10, 2006 and the MMP update and compliance fee were submitted on October 16, 2006. Mr. Muller failed to submit a complete MMP update for 2008. On October 9, 2008, a letter was sent to Mr. Muller indicating the MMP was incomplete. The information was submitted on October 15, 2008.

7. Mr. Muller has failed to submitted timely MMP updates for the Dan Muller 5 facility in the past. Mr. Muller failed to submit a timely MMP update and compliance fee for 2005. On October 5, 2005, a letter was sent to Mr. Muller indicating that the MMP update submittal was incomplete. On November 7, 2005, a Notice of Violation letter was sent to Mr. Muller for an incomplete MMP update submittal. The information was eventually submitted and the MMP updated was approved on December 22, 2005. Mr. Muller failed to submit a timely MMP update and compliance fee for 2006. On October 10, 2006, a Notice of Violation letter was sent to Mr. Muller for failing to submit the MMP update and compliance fee. On October 16, 2006, Mr. Muller submitted the MMP update and compliance fee. Mr. Muller failed to submit a timely MMP update and compliance fee for 2009. On October 14, 2009, a Notice of Violation letter was sent to Mr. Muller for failing to submit the MMP update and compliance fee. In March 2010, Mr. Muller and the DNR entered into an Administrative Consent Order for Mr. Muller's failure to submit the MMP update and compliance fee for 2009. The Administrative Consent Order included a \$1,000.00 administrative penalty. The MMP update and compliance fee for 2009 was submitted on February 12, 2010.

CONCLUSIONS OF LAW

1. Iowa Code section 459.103 provides that the Environmental Protection Commission (Commission) shall adopt rules related to the construction or operation of animal feeding operations. The Commission has adopted such rules at 567 IAC chapter 65.

2. 567 IAC 65.16(3) requires that all persons required to submit a MMP also submit an updated MMP and compliance fees on an annual basis. This requirement became effective March 1, 2003. The updated plan must reflect all amendments made during the period of time since the previous MMP submission. The compliance fee is fifteen cents per animal unit. Mr. Muller failed to timely submit complete MMP updates and compliance fees for 2011 for two of his animal feeding operations. The above-facts indicate violations of this provision.

V. ORDER

THEREFORE, the DNR orders and Dan Muller agrees to do the following:

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1. Dan Muller shall pay an administrative penalty in the amount of \$4,500.00 in accordance with the following payment plan. If any of the payments are not received in accordance with the payment plan, the remaining penalty shall be due immediately.

\$562.50 due October 15, 2012;	\$562.50 due October 15, 2013;
\$562.50 due January 15, 2012;	\$562.50 due January 15, 2014;
\$562.50 April 15, 2012;	\$562.50 due April 15, 2014;
\$562.50 July 15, 2013;	\$562.50 due July 15, 2014.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC Chapter 10. Pursuant to this chapter, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$4,500.00. The administrative penalty is determined as follows:

Economic Benefit – Mr. Muller's failure to timely submit the MMP updates and fees for two of his facilities has allowed him to save time and money. An economic benefit has been gained from the delay in the submittals. \$500.00 is assessed for this factor.

Gravity – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. The MMP update is a crucial aspect of the DNR's animal feeding operation program. The MMP update ensures that an animal feeding operation has adequate production land available so that the manure can be properly applied to cropland at an agronomic rate in order to prevent over application of manure. Each of Mr. Muller's facilities has a capacity of 1,320 animal units and environmental harm is likely to occur if the manure is not applied properly. Therefore, \$2,500.00 is assessed for this factor.

Culpability – Mr. Muller has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that his conduct is subject to DNR's

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rules. Mr. Muller is aware of the regulations and has a history of noncompliance with the requirements. Therefore, \$1,500.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Dan Muller. For that reason Dan Muller waives the right to appeal this administrative consent order or any part thereof.

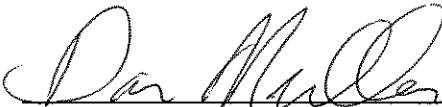
VIII. NONCOMPLIANCE

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.



CHUCK GIPP, DIRECTOR
Iowa Department of Natural Resources

Dated this 20th day of
November, 2012.



DAN MULLER

Dated this 12 day of
Oct, 2012.

Facility #60497 and Facility #60185; Kelli Book; Field Office 2; EPA; VIII.C.2